City of Lafayette Staff Report

For:	Redevelopment Agency Board
By:	Ann Merideth, Community Development Director
Date Written:	August 7, 2008
Meeting Date:	August 11, 2008
Subject:	Supplemental information regarding agreements with Brian Goggin and Kana Tanaka for the Library public art projects

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Summary

Museum and City staff successfully concluded negotiations with Kana Tanaka for the Children's Activity Deck public art project. The final agreement signed by Ms. Tanaka is attached.

Negotiations are continuing with Brian Goggin, but will not be concluded in time for the August 11 Agency meeting. The final agreement with Mr. Goggin will be returned to the Board at its September 9 meeting.

Recommendation

Approve and authorize the Executive Director to execute the agreement with Kana Tanaka.

AGREEMENT FOR ARTIST AND ART SELECTION
FOR THE CHILDREN'S ACTIVITY DECK
LAFAYETTE LIBRARY AND LEARNING CENTER

AGREEMENT BETWEEN THE LAFAYETTE REDEVELOPMENT AGENCY
AND KANA TANAKA

This Agreement is made this _____ day of August, 2008, in the City of Lafayette, County of Contra Costa State of California, by and between the Lafayette Redevelopment Agency ("Agency"), a public body, corporate, and politic, and Kana Tanaka ("Artist"), for the purposes and on the terms and conditions set forth below.

Recitals

WHEREAS, Agency has allocated funds for the acquisition of artwork for the Lafayette Library and Learning Center.

WHEREAS, Agency's Library Public Art Committee selected Artist to create an Artwork for the Children's Activity Deck at Site.

WHEREAS, Agency, on July 28, 2008 and August 11, 2008, approved the Committee's recommendation and has authorized Agency Executive Director to enter into Agreement with Artist in connection with Artwork on the following terms and conditions.

Now, THEREFORE, Artist and Agency hereby agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement or the Contract Documents, it shall have the meaning set forth below:

A. "ADA" shall mean the Americans with Disabilities Act (including all rules and regulations thereunder), Title 24 (California Building Code) and all other applicable federal, state and local disabled access legislation, as the same may be amended, modified or supplemented from time to time.

B. "Agency" shall mean the Lafayette Redevelopment Agency, and its officers and employees.

C. "Agreement" shall mean this Agreement, including all addenda, appendices and modifications, whether created now or in the future.

D. "Alter" or "Alteration" shall mean, with respect to Artwork, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate or deface.

E. "Approved costs" shall mean such costs as are scheduled on Appendix B, including the maximum expenditure authorized for each item.

F. "Artist" shall mean Kana Tanaka.

G. "Artwork" shall mean Work of art designed by Artist for Site under the terms of this Agreement, as described and defined in Artist's Proposal. In brief, Artwork is entitled "Optical Streams – Part 1 & 2" and will consist of colored disks suspended from the overhead trellis to trace the line of a Lafayette creek pattern and casting shadows that

show the symbols from the periodic table. The Artwork also consists of optical lenses placed along the outer deck walls and on the trellis columns creating opportunities for children to see the work and each other through looking glasses.

H. "Authorization" shall mean a Term Purchase Agreement, Contract Order or Purchase Order properly executed by Agency for the specific funding of this Agreement or any modification thereof.

I. "Budget" shall mean a specific and detailed document identifying the cost of completion of all Work under this Agreement, including all modifications. The Budget shall include the costs for all design fees and costs; preliminary and final engineering requirements; estimates of ongoing maintenance needs; materials and labor for fabrication, including Artist and subcontractors' costs; consultants including engineers and specifications writers; transportation of Artwork; installation of Artwork, including any necessary permits; permits and licenses; required insurance; any sales tax; post-installation maintenance required of Artwork by Artist; and a ten (10) percent contingency allowance.

J. "Committee" shall mean Agency's Library Public Art Committee, its designees and assigns.

K. "Conceptual Design" shall mean drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples and cost estimates at thirty (30) percent design completion. The information provided in Conceptual Design shall be complete enough to fully illustrate the design intent of Artwork.

L. "Construction Documents" shall mean final and complete architectural, structural, mechanical and engineering drawings, written specifications, structural and engineering calculations at one hundred (100) percent design completion, prepared by Artist or Artist's subcontractors, setting forth in detail the design of Artwork and which are suitable for bidding. Construction Documents shall describe and fix the location, size, materials and character of Artwork with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, method of attachment and fabrication methods, and other such elements as may be appropriate. Construction Documents must be signed and stamped by design professionals licensed in the State of California as required by the California Building Code and any local amendments thereto.

M. "Consultant" shall mean Oakland Museum of California as described in "Agreement for Public Art Management Services for the Lafayette Library and Learning Center Project", dated May 14, 2007. Pursuant to that Agreement, Consultant may act on behalf of Agency when directed to do so by Agency.

N. "Contract Documents" shall mean any work, including but not limited to, Design and Construction Documents, Shop Drawings, Mock-ups, models, Samples, engineering calculations, approved Installation Plans, and all material Samples and product data, the project Budget, and any and all additional documents and submittals produced under this Agreement that Committee has approved and to which the completed Artwork is expected to conform. "Design Development Documents" shall mean presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect Artwork and how it will be installed at Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and cost estimates at sixty (60) percent design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of Artwork with respect to its relationship to Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

O. "Force Majeure" with respect to a delay in or prevention of performance shall mean (a) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (b) any changes in any applicable laws or the interpretation thereof; or (c) any flood, washout, explosion, or any other cause beyond the reasonable control of the party from whom performance is required.

P. "Lafayette Library and Learning Center Art Collection" shall mean the art at the Lafayette Library and Learning Center owned by Agency and/or City of Lafayette.

Q. "Mock-ups" or "Samples" shall mean illustrations such as standard schedules, performance charts, instructions, brochures, diagrams, and physical samples of all or any portion of Work, and other information furnished by Artist to illustrate materials or equipment for all or any portion of Work. The purpose of the Mock-ups and Samples is to provide physical examples that illustrate materials, equipment or workmanship and establish the standards by which Work will be judged.

R. "Proposal" shall mean the proposed visual, aesthetic, and artistic intent and design of Artwork. The most recent design approved by Agency is incorporated herein as part of the Contract Documents and is binding unless changes are approved by resolution of Agency.

S. "Site" shall mean the Lafayette Library and Learning Center Project Site at 3491 Mount Diablo Boulevard, Lafayette, California.

T. "Shop Drawings" shall mean drawings, diagrams and other data specifically prepared by Artist or Artist's subcontractors, fabricators, manufacturers, suppliers, General Contractor, of distributors illustrating in detail exactly how Work, or any element thereof, is to be fabricated and installed. Shop Drawings shall be signed and stamped by a licensed design professional unless this requirement is specifically waived by Agency.

U. "Work" shall mean Work of Artist pertaining to providing Agency with the services and deliverables as required under the Agreement. In addition to all other services and deliverables required, Work shall include the design, fabrication, delivery and installation of Artwork.

Whenever the words "as directed," "as required," "as permitted" or words of like effect are used, it shall be understood as the direction, requirement, or permission of Agency. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of Agency. The words "approval," "acceptable," "satisfactory," or word of like import, shall mean approved by, or acceptable to, or satisfactory to Agency, unless otherwise indicated by the context. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation."

2. <u>Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation</u>

This Agreement is subject to Agency's budget. Charges will accrue only after prior written authorization certified by Agency. Agency's obligation under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such certification.

This Agreement will terminate without penalty, liability or expense of any kind to Agency at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Agency has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Agency budget decisions are subject to the discretion of Agency. Artist's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3. Term of Agreement

The term of this Agreement shall be from August ___, 2008 to October 31, 2009, unless extended by mutual agreement of parties.

4. Effective Date of Agreement

This Agreement shall become effective on _____.

5. Services Artist Agrees to Perform; Procedure for Execution of Work; Budget; Suppliers

A. Services. Artist agrees to perform the services provided for in Appendix A, "Services to be Provided by Artist," attached hereto and incorporated herein by this reference, as well as any scope of services included in any subsequent modification to this Agreement.

B. Procedure for Execution of Work.

1) It is the general intent of the parties that Artist will complete the design, fabrication and installation of Artwork at Site, provided that Agency determines, in its sole discretion, to go forward with the completion of Artwork. Work shall be completed in separately defined, successive stages ("Phases"). In addition to the Phase(s) set forth in Appendix A at the time this initial Agreement is entered into, the parties may modify this Agreement to include subsequent Phases. Each Phase shall be governed by this Agreement, and by any modifications to this Agreement setting forth specific terms and conditions governing each Phase of Work. Each modification will include the Phase for which Agency has given authorization, the scope of work covered by that Phase, the schedule of deliverables, insurance requirements and payment terms.

2) By authorizing any particular Phase, Agency is not obligated to authorize any subsequent Phase. Subject to the limitations contained in this Agreement, Agency may terminate this Agreement at any time and is under no obligation to modify Agreement to include subsequent Phases.

3) Artist shall not commence any Phase nor incur any expense in anticipation of commencing any Phase unless Agency has given prior written authorization. Prior to beginning each Phase, Artist shall obtain the necessary approval of the previous Phase. In no event shall Agency be liable for any claims or damages arising from Artist's unauthorized actions.

4) If requested to do so in writing by Agency, Artist shall enter into modifications of this Agreement to include later Phases of Work, up to and including final installation at Agency's option. Artist's fee for such subsequent Phases shall be in accordance with the Budget approved pursuant to subsection C hereinbelow. Agency must exercise its option to require a subsequent Phase within three (3) years of completion of the prior Phase. If Agency fails timely to exercise its option, Artist is released from its obligation under this Section. Artist acknowledges that Agency has provided to Artist a model contract template for Phases 1 though V of Work, from conceptual design through fabrication and installation. Artist agrees that, if Agency exercises its option to enter into subsequent Phases of Work, Artist shall be bound to modify this Agreement to include such additional Phases of Work under the terms and conditions set forth in such model contract templates.

5) Work to be completed by Artist is unique and personal to Artist, and may not be capable of completion by anyone other than Artist. Therefore, if Artist fails or refuses to modify this Agreement to include subsequent Phases after having been requested to do so by Agency, or fails to complete Work required by any Phase, Agency may require that Artist return all payments made under this Agreement from the initiation of the Agreement. If Agency determines, it its sole and reasonable discretion, that Artist's failure or refusal to

complete subsequent Phases is justifiable and in good faith and for reasons beyond the control of Artist, Agency may authorize Artist to keep payments made under this Agreement for prior completed Phases. In such case, Agency may, at is option, engage another Artist to complete Work.

C. Budget. Unless otherwise specified in a modification to this Agreement, at the completion of Design Development Documents, Artist shall submit a final Budget for the entire cost of completion of Artwork, including design, fabrication, transportation and delivery, installation and any post-installation maintenance required of Artist. Once adopted by Agency as part of the approval of the Design Development phase, such Budget shall be binding upon Artist. If Artist is unable to provide the completed and installed Artwork to Agency within the approved Budget, Artist will be considered to be in breach of this Agreement. The Budget, in addition to allowing for all costs anticipated for the design, fabrication, transportation and installation of Work, must also allow for a 10 percent contingency allowance. Artist's use of the contingency allowance must be approved in advance in writing by Agency. Any balance remaining in the materials budget or contingency allowance at the conclusion of the Agreement reverts to Agency. The Budget shall also include an estimate of the costs of on-going maintenance of Work. Such maintenance costs shall not be provided out of the Contract Amount unless Agency specifically requires in writing that the Artist allocate a portion of the Contract Amount to on-going maintenance costs.

D. Suppliers. Artist shall provide Agency with the name, address and telephone number of suppliers whose total invoices are expected to exceed one thousand dollars ($1,000.00) prior to Artist beginning work under this Agreement, or as such expenses are incurred by Artist after certification of this Agreement.

6. Compensation

The total payment amount due to Artist under this Agreement shall not exceed eighty two thousand five hundred dollars ($82,500). This total amount shall include Artist's fee and all reimbursable expenses. Out of the total Contract Amount, Artist shall be responsible for paying all of Artist's costs and expenses associated with Work, including the costs of suppliers, subcontractors, fees, taxes, permits, insurance, transportation to and from meetings, and all other expenses associated with the scope for Work specified in this Agreement (hereinafter "Artist's Costs").

Fee: Artist's design fee for coordinating and producing Work (hereinafter "Artist's Fee") is $16,500.

Reimbursables: In addition to Artist's Design Fee, as set forth immediately above, Artist shall be reimbursed up to $66,000 for Approved Artist's Costs based on the submittal of original receipts or invoices. The breakdown of Approved Costs associated with this Agreement appears in Appendix B, attached hereto and incorporated herein by this reference. Artist shall be entitled to reimbursement only to the extent Artist actually incurs such costs, and Agency shall retain the benefit of any cost savings below those costs reflected in Appendix B and in the Budget.

Compensation shall be made to Artist based upon Artist's successful completion, in the sole reasonable discretion of Agency, of the milestones set forth in the Appendices to this Agreement.

No charges shall be incurred under this Agreement nor shall any payments become due to Artist until deliverables, services, or both, required under this Agreement are received from Artist and approved by the Committee as being in accordance with this Agreement. Agency may withhold payment to Artist in any instance in which Artist has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Agency be liable for interest or late charges for any late payments.

7. Guaranteed Maximum Costs

Agency's obligation hereunder shall not at any time exceed the amount certified by Agency for the purpose and period stated in such certification.

Except as may be provided by laws governing emergency procedures, officers and employees of Agency are not authorized to request, and Agency is not required to reimburse Artist for, commodities or services beyond the scope of this Agreement unless the changed scope is authorized by amendment and approved as required by law.

Officers and employees of Agency or Consultant are not authorized to offer or promise, nor is Agency required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which this Agreement is certified without certification of the additional amount by Agency.

Agency is not authorized to make payments on any contract for which funds have not been certified as available in the budget by supplemental appropriation.

8. Payment; Invoice Format

Invoices furnished by Artist under this Agreement must identify the invoice as "Invoice for Artwork for *Optical Streams – Part 1 & 2*," and include the date of transaction, name and address of Artist, interim payment number for which compensation is requested, and amount requested. Artist must submit an original invoice, which must be accompanied by pre-printed and itemized receipts. Agency shall make payment to Artist at Artist's address for notices in this Agreement. All amounts paid by Agency to Artist shall be subject to audit by Agency.

9. Taxes

A. Any taxes levied upon the Agreement, the transaction, or the equipment or services delivered under this Agreement, including possessory interest taxes and California sales and use taxes, shall be borne by Artist.

B. Artist recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless Agreement entitles the Artist to possession, occupancy or use of Agency property for private gain. If such a possessory interest is created, then the following shall apply:

1) Artist, on behalf of itself and any permitted successors and assigns, recognizes and understands that Artist, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Artist, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Artist accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of Agency to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Artist, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g., Rev. & Tax Code section 64, as amended from time to time). Artist accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the Contra Costa County Assessor, the State Board of Equalization or other public agency as required by law.

4) Artist further agrees to provide such other information as may be requested by Agency to enable Agency to employ with any reporting requirements for possessory interests that are imposed by applicable law.

10. Payment Does Not Imply Acceptance of Work; Consultation; Approval and Final Acceptance

A. Payment Does Not Imply Acceptance of Work. The granting of any payment by Agency, or the receipt thereof by Artist, shall in no way lessen the liability of Artist to replace unsatisfactory Work, equipment, or materials although the unsatisfactory character of such Work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that does not conform to the requirements of this Agreement may be rejected by Agency and in such case must be replaced by Artist as expediently as is reasonably possible.

B. Consultation. Artist agrees to cooperate in good faith with Agency and to be available as reasonably necessary for consultation with Agency and Consultant during all stages of Work. Agency agrees to facilitate cooperation and arrange for and coordinate all necessary consultation among the Artist and Consultant.

1) Artist shall incorporate into the Contract Documents any changes made to Site design during the design process.

2) Artist shall copy Agency on all correspondence between Artist and Consultant to which Agency is not a party. Artist shall notify Agency in writing of any verbal agreements and/or understandings that are arrived at in conversations or meetings between Artist and Consultant to which Agency is not a party. Artist understands that failure to inform Agency of such agreements, and failure to confirm such agreements in writing, between Artist and Consultant may result in such agreements not being honored.

C. Approval and Final Acceptance

1) The granting or withholding of any approval by Agency shall be determined by Agency in its sole and reasonable discretion. However, Agency shall approve all deliverables if they conform to plans or Contract Documents previously approved by Agency. If Agency withholds approval of any deliverables of Phase, in addition to other rights or remedies available to Agency under the Agreement or applicable law, Agency shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement.

2) Final Acceptance. Artist shall advise Agency in writing when Artist has completed all obligations, services and deliverables under this Agreement and all modifications. Agency promptly shall send a Notice of Response identifying in writing any obligations, services or deliverables that Artist has not satisfactorily met, any defects in Artist's performance, and the requirement of Artist to cure any such default. Artist shall have twenty (20) days from dispatch of the Notice of Response to cure any defects in Artist's performance identified in Agency Notice of Response. Artwork shall not be finally accepted by Agency unless Agency has taken formal action of Final Acceptance. Agency shall make a good faith effort to make a determination as to Final Acceptance promptly.

3) Upon Final Acceptance, Agency shall accession Artwork into the Lafayette Library and Learning Center Art Collection.

11. Bonds

A. Labor and Materials Bond. If specified in a subsequent modification, either (1) the labor and materials costs associated with construction are expected to exceed $25,000 and this Agreement is for a "public work" as defined by California Civil Code § 3100, or (2) a bond is required in Agency's discretion. In either case, Artist is required to obtain a payment bond in the amount specified in a subsequent modification. Such bond must include such terms and conditions as are required and be approved as to form by Agency Counsel.

B. Performance Bond. Where appropriate, Agency may require that Artist obtain a performance bond in an amount specified by Agency. Such bond must include such terms and conditions as are required and be approved as to form by Agency Counsel.

C. The bonds shall name as dual obligees Artist, Agency and the specific project. In the event of Artist or any of Artists' subcontractors' failure to perform, Artist shall assign all rights under any Performance and Payment or Labor and Materials Bond in favor of Agency.

12. Responsibility for Equipment

Agency is not responsible for any damage to persons or property, including Artwork, as a result of the use, misuse or failure of any equipment used by Artist, or by any of its employees, subcontractors, agents or representatives, even though such equipment be furnished, rented or loaned to Artist by Agency. Artist, rather than Agency, is responsible for Site conditions and the health and safety of Artist's employees, subcontractors and agents, and all other persons that work on or visit Site at the invitation of Artist.

13. Independent Contractor; Payment of Taxes and Other Expenses

A. Independent Contractor. Artist shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Agency under this Agreement. Artist is liable for the acts and omissions of itself, its employees, subcontractors, agents or representatives. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Agency and Artist. Any terms in this Agreement referring to direction from Agency or Consultant shall be construed as providing for direction as to policy and the result of Artist's work only, and not as to the means by which such a result is obtained.

B. Payment of Taxes and Other Expenses. Should Agency, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Artist is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Artist which can be applied against this liability).

Should a relevant taxing authority determine a liability for past services performed by Artist for Agency, upon notification of such fact by Agency, Artist shall promptly remit such amount due or arrange with Agency to have the amount due withheld from future payments to Artist under this Agreement (again, offsetting any credits for amounts already paid by Artist which can be applied against this liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Artist shall not be considered an employee of Agency. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Artist is an employee for any other purpose, then Artist agrees to a reduction in Agency's financial liability so that Agency's total expenses under this Agreement are not greater than they would have been had the court, arbitrator or administrative authority determined that Artist was not an employee.

14. Insurance

A. Required Insurance. Without in any way limiting Artist's liability pursuant to the "Indemnification" section of this Agreement, Artist must maintain in force insurance in the following amounts and coverages, or as modified in Appendix A. Artist must obtain such insurance when required and maintain such insurance continuously from the time originally specified, throughout the term of this Agreement until Final Acceptance of Work.

1) Workers Compensation, in statutory amounts with Employers' Liability Limits not less than $1,000,000 each accident. Artist shall obtain such insurance prior to certification of this Agreement. To the extent Artist warrants, in writing, that Artist is not an employer and has not employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to Agency proof of Workers Compensation insurance.

2) Professional Liability Insurance for all design professionals (such as architects, landscape architects or engineers) who provide Artist with signed stamped drawing or calculations. Such insurance shall have limits not less than $1 million each claim with respect to negligent acts, errors or omissions, and any deductible may not exceed $50,000 each claim. Artist or Artist's subcontractors shall obtain such insurance when Artist subcontracts for any work from such a design professional, and prior to the submittal of Construction Documents. Any design professional required to obtain professional liability insurance must maintain proof of insurance for the term of this Agreement.

3) Commercial General Liability Insurance, with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Artist shall obtain such insurance prior to certification of this Agreement.

4) Automobile Liability Insurance: If Artist is an individual., Personal Automobile Liability Insurance with limits not less than $100,000/$300,000 each occurrence.. If Artist is a corporation or other legal entity, Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-owned and Hired auto coverage, as applicable, unless a lesser amount is approved by Agency's Risk Manager. Artist shall obtain such insurance prior to certification of this Agreement.

5) Fine Arts Insurance or other insurance against loss in an amount to be specified in a subsequent contract modification. Artist shall obtain such insurance prior to commencing fabrication of Artwork.

6) Transportation and/or Installation Coverage, as necessary and appropriate.

B. Required Policy Language. Policies of insurance for Commercial General Liability, Business or Personal Automobile Liability, Fine Arts Insurance and Professional Liability for Design Professionals must include the following:

1) With the exception of Workers' Compensation, Professional Liability and Personal Automobile Liability, endorse the policy to name as Additional Insured Agency of Lafayette, its Officers, Agents, and Employees. Professional Liability policies shall name Lafayette Library and Learning Center as a covered project; and

2) State that such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits.

3) Provide thirty (30) days' advance written notice to Agency of cancellation, mailed to the following address: Lafayette Redevelopment Agency, 3675 Mount Diablo Blvd., Suite 210, Lafayette, CA 94549, ATTN: Ann Merideth.

C. Miscellaneous Insurance Requirements:

1) All insurance policies required under this Agreement shall be issued by good and responsible insurance companies reasonably acceptable to Agency that are authorized to do and doing business in the State of California.

2) Should any of the required insurance be provided under a claims-made form, Artist shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement. to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

3) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

4) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until Agency receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Agency may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5) Artist must furnish to Agency certificates of insurance and copies of additional insured policy endorsements, in form and with insurers satisfactory to Agency, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Agency request.

6) Approval of the insurance by Agency shall not relieve or decrease the liability of Artist hereunder.

7) In the event of loss or damage and where any insurance proceeds are paid to Agency, Agency shall make a determination, it its sole discretion, as to whether Work shall be restored, reconstructed or abandoned. If Agency determines that Artist shall restore or reconstruct Work, all insurance proceeds received by Agency shall be paid to Artist to the extent the proceeds are used for such restoration or recreation.

15. Indemnification and General Liability

To the fullest extent permitted by law. Artist shall assume the defense of, indemnify and save harmless Agency and its officers agents, representatives and employees (collectively "Indemnitees") for any claim, loss, damage, injury, (including, without limitation, injury to or death of an employee or subcontractor of Artist or Artist's subcontractors) and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees and costs of investigation) that arise directly or indirectly, in whole or in part, from: (1) the services under this Agreement, or any part thereof; (2) any act or omission of Artist, any consultant of subcontractor to Artist, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities").

Artist assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or contractors of any Indemnitee. Multiple party liability shall be determined pursuant to comparative fault principles in the State of California.

Artist's indemnification obligations for claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the proportionate extent of Artist's negligence or other breach of duty.

Artist shall indemnify and hold Agency harmless from all loss and liability (including attorneys' fees, court costs and all other litigation expenses) for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any person or persons in consequence of Agency's acceptance of Artist's Work or the use by Agency, or any of its officers or agents, of articles or services to be

supplied in the performance of this Agreement. Such obligation shall apply where Agency's use of Artist's Work is authorized under this or any subsequent agreement between the parties.

16. Incidental and Consequential Damages

Artist shall be responsible for incidental and consequential damages resulting in whole or in part from Artist's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Agency may have under applicable law.

17. Liability of Agency

AGENCY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AGENCY BE LIABLE TO ARTIST (REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT) FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR WORK PREFORMED IN CONNECTION WITH THIS AGREEMENT.

18. Timely Provision of Services; Damages for Delayed Performance; Liquidated Damages

A. Time is of the essence in this Agreement. Artist agrees to provide all deliverables in accordance with the timelines contained herein unless changes are approved in writing by Agency.

B. Damages for Delayed Performance.

1) Generally. Artist shall be liable for all incidental and consequential damages resulting, directly or indirectly, from delays in performance caused by Artist's acts or omissions. Artist shall not be liable to Agency for damages resulting from delays caused by force majeure or by acts or omissions of Agency, Consultant, Architect or the General Contractor, except to the extent Artist failed reasonably to mitigate such damages.

2) Illness, Injury, Death or Incapacity. Should Artist die, become ill, injured or otherwise incapacitated (collectively "incapacitated") such that Artist is unable to work for any period not exceeding thirty (30) days (whether consecutive or non-consecutive), any delay arising out of such incapacity will be allowed by Agency whenever it is practicable to do so, considering the facts and circumstances of Work, Project, Architect, General Contractor and Site. Agency may require Artist to provide medical certification of any claimed incapacity. In the event Artist is incapacitated such that Artist is unable to work for a period exceeding a total of thirty (30) days (whether consecutive or non-consecutive), Agency may, at its option, undertake to complete and install Work in Artist's absence, so long as the final Artwork is substantially similar to that designed by Artist. If Agency undertakes to complete Work, Agency shall give due consideration to Artist's suggestions, and Artist may disclaim authorship of Work. If Agency exercises its option to implement Artwork in Artist's absence, any compensation paid or payable to Artist shall be reduced by the costs and expenditures of Agency in completion and installation of Work. In case of incapacity exceeding thirty (30) days, the following person shall be Artist's representative vis-à-vis Agency for purposes of this Section: *YOSHIHIRO MIURA, 654 Yuba St. Richmond, CA 94805.*

C. Liquidated Damages.

1) By entering into this Agreement, Artist acknowledges that in the event Work is delayed beyond the scheduled milestones and timelines provided in this Agreement, Agency may suffer actual damages that will be extremely difficult to determine. Agency may determine that specification of liquidated damages is appropriate for some or all phases of Work under this Agreement and, if so, shall specify the amount of

liquidated damages in the appropriate phase of Work under Appendix A. Artist agrees that the specified sum of damages per day for each calendar day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that Agency will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded.

2) Agency may deduct a sum representing the liquidated damages from any money due to Artist. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by Agency because of Artist's failure to deliver to Agency within the time fixed or such extensions of time permitted in writing by Agency.

3) In case of delay in Artist's services through no fault of Artist, including construction delay, Artist shall store Work at no additional cost to Agency for up to six (6) months. If Artist's Work is delayed due to construction delays at Site or other delays caused by Agency or its contractors, so that Artist suffers documented direct cost impacts in the form of increased materials and/or labor, Artist may apply to Agency for reimbursement of those expenses, which Agency may award in its sole discretion.

19. Artist's Default; Remedies

A. Artist's Default. Artist's failure or refusal to perform or do any act required of Artist in this Agreement, including unexcused failure to meet the delivery deadlines or to conform Work to the Contract Documents approved by Agency, shall constitute a default.

B. Termination in the Case of Default. On or after any event of Artist default, Agency shall have the right to exercise its legal and equitable remedies. Agency's remedies include the right to terminate this Agreement upon written notice to Artist (setting forth with specificity the basis for Agency's termination), or to seek specific performance of all or any part of this Agreement. Upon termination by Agency, this Agreement shall be of no further force or effect. The date of termination shall be five (5) calendar days from Agency's dispatch of notice of termination, unless a later termination date is specified in the notice of termination. Agency may rescind the notice of termination or extend the date for termination, but no rescission or extension is valid unless it is in writing and approved by resolution of Agency.

C. Opportunity to Cure. In its sole discretion, Agency may give Artist a grace period and opportunity to cure any default. Such grace period may be for up to thirty five (35) calendar days after dispatch or written notice from Agency setting forth the nature of the default and the requirements to cure.

D. No Obligation to Pay. Except as specifically provided in this Agreement, Agency shall have absolutely no payment or other obligations to Artist for any work or service completed, begun or contemplated by Artist subsequent to termination of this Agreement for any reason.

E. These remedies are in addition to all other remedies available to either party under this Agreement or under applicable federal, state or local laws should the other party fail to comply with the terms of this Agreement.

20. Termination for Convenience

A. Agency shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Agency shall exercise this option by giving Artist written notice of termination. The notice shall specify the date on which termination shall become effective. As described below in subsection C., Agency shall pay Artist for services rendered prior to the date of termination.

B. Upon receipt of the notice, Artist shall commence and perform, with diligence, all actions necessary on the part of Artist to effect the termination of this Agreement on the date specified by Agency and to minimize the liability of Artist

and Agency to third parties as a result of termination. All such actions shall be subject to the prior approval of Agency. Such actions shall include, without limitation:

1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Agency.

2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

3) Terminating all existing orders and subcontracts.

4) At Agency's direction, assigning to Agency any or all of Artist's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Agency shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5) Subject to Agency's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

6) Completing performance of any services or work that Agency designates to be completed prior to the date of termination specified by Agency.

7) Taking such action as may be necessary, or as Agency may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Artist and in which Agency has or may acquire an interest.

C. Within thirty (30) days after the specified termination date, Artist shall submit to Agency an invoice, which shall set forth each of the following as a separate line item:

1) The reasonable cost to Artist, without profit, for all services and other work Agency directed Artist to perform prior to the specified termination date, for which services or work Agency has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of ten (10) percent of Artist's direct costs for services or other work. Any overhead allowance shall be separately itemized. Artist may also recover the reasonable cost of preparing the invoice.

2) A reasonable allowance for profit on the cost of the services and other Work described in the immediately preceding subsection (1), provided that Artist can establish, to the satisfaction of Agency, that Artist would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed five (5) percent of such cost.

3) The reasonable cost to Artist of handling material or equipment returned to the vendor, delivered to Agency or otherwise disposed of as directed by Agency.

4) A deduction for the cost of materials to be retained by Artist, amounts realized from the sale of materials and not otherwise recovered by or credited to Agency, and any other appropriate credits to Agency against the cost of the services or other work.

D. In no event shall Agency be liable for costs incurred by Artist or any of its subcontractors after the termination date specified by Agency, except for those costs specifically enumerated and described in the immediately preceding subsection C. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection C.

E. In arriving at the amount due to Artist under this Section, Agency may deduct: (1) all payments previously made by Agency for work or other services covered by Artist's final invoice; (2) any claim which Agency may have against Artist in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection D; and (4) in instances in which, in the opinion of Agency, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoices amount and Agency's estimate of the reasonable cost of performing the invoices services or other work in compliance with the requirements of this Agreement.

F. Agency's payment obligation under this Section shall survive termination of this Agreement.

21. Rights and Duties upon Termination or Expiration

If Agency terminates this Agreement for any reason, Agency shall be automatically vested with title to any Work produced under this Agreement up to the date of termination. Artist shall deliver any such Work to Agency in the manner, at the times, and to the extent directed by Committee. If termination is due to the default of Artist, Agency may, at its option, require Artist to refund to Agency any interim payment received under the Agreement; in such case, Agency may transfer title of Work to Artist. This subsection shall survive termination of this Agreement.

22. Artist's Warranties

A. Warranty of Title. Artist represents and warrants that Artist is the sole author of Artwork and that Artist is the sole owner of any and all copyrights pertaining to Artwork. Artist further represents that Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in Artwork or any parts of Artwork.

B. Warranty of Workmanship. Artist represents and warrants that, for a period of three (3) years after final acceptance, Work will be free of defects in workmanship or materials, including Inherent Defects (as defined below), and that Work will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at Site. "Inherent Defect" refers to a quality within the material or materials which comprise Work which, either alone or in combination, results in the tendency of Work to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in the Contract Documents approved by Agency. Artist shall, at Artist's sole cost and expense, remedy any defects in workmanship or materials that appear within a period of three (3) years from the date of Final Acceptance of Artwork by Agency.

C. Warranty of Public Safety. Artist represents and warrants that Work will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.

D. Acceptable Standard of Display. Artist represents and warrants that:

1) General routine cleaning and repair of Artwork and any associated working parts and/or equipment will maintain Work within an acceptable standard of public display; and

2) Foreseeable exposure to the elements and general wear and tear will cause Work to experience only minor repairable damages and will not cause Work to fall below an acceptable standard of public display; and

3) With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, Work will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust fracturing, staining, chipping, tearing, abrading and peeling.

4) Manufacturer's Warranties. To the extent Work incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to Agency.

23. Instructions for Maintenance

Unless specifically provided in this Agreement, Artist shall not be responsible for ongoing maintenance of Artwork. Artist shall provide Agency with a General Maintenance Plain for Artwork, generally describing anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement of any part of Artwork and associated moving parts or equipment; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance preservation activities relating to Artwork. Artwork must be durable, taking into consideration that Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.

Although Agency strives to maintain the Lafayette Library and Learning Center Art Collection in good repair and condition, Agency is not required by this Agreement to maintain Artwork to any particular standard. Agency may determine to allow Artwork to deteriorate on accordance with Artwork's temporary life span, if deemed appropriate by Agency or if Agency lacks sufficient funds or other resources for required maintenance and/or conservation. If Artwork suffers deterioration, Agency shall have sole discretion to determine whether to remove Artwork from display as a result of deterioration, or whether to maintain Artwork on display despite its deteriorated condition.

The anticipated life span of Artwork is two part: the glass, unless forcefully damaged, will last for 25+ years and the silicon lamination has a 7 year warranty but is known to last longer than 10 years from the date of Final Acceptance by Agency. After that time, Agency in its sole discretion may re-evaluate Artwork to determine if it retains its identity as a work of art and if not, whether to take appropriate action, including the possibility of destroying Artwork. If no life span is specified above or pursuant to a subsequent contract modification, the anticipated life span of Artwork shall be twenty five (25) years. If Agency determines that, through decay, vandalism or other forces, Artwork has lost its integrity to the point where it should be destroyed, Agency shall first offer Artwork to Artist free of charge.

24. Artist's Moral Rights; Agency's Ownership Rights

A. Agency, having expended considerable public funds to commission Artwork, intends to display Artwork at Site as originally created by Artists and to maintain Artwork in good condition. Agency, however, must preserve complete flexibility to operate and manage Agency property in the public's interest. Therefore, Agency retains the absolute right to Alter Artwork in Agency's sole judgment. For example, Agency may Alter Artwork to eliminate hazard, to comply with the ADA, to otherwise aid Agency in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, Agency finds Site to be inappropriate, Agency has the right to install Artwork at an alternate location that Agency chooses in its sole discretion. If Artwork is free standing such that it can be removed without significant damage to Artwork or Site, and if Agency authorizes the removal of Artwork, Agency shall take reasonable precautions to minimize Alteration of Artwork during removal.

B. With respect to Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims, arising at any time and under any circumstances, against Agency, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal, or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If Artwork is incorporated into a building such that Artwork cannot be removed from the building without Alteration of Artwork, Artist waives any and all such claims against any future owners of Site, and its agents, officers and employees, for Alteration of Artwork.

C. If Agency intends to take any action with respect to Site or Artwork that would Alter Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

1) Notice. Where time permits, Agency shall make reasonable good faith efforts to notify Artist at least twenty (20) calendar days prior to authorizing any Alteration of Artwork, at the last phone number or address provided by the Artist to Agency. Where time does not permit prior to Alteration of Artwork – for example, in cases of public hazard, accident or unauthorized Alteration – Agency shall notify Artist within thirty (30) calendar days after such Alteration.

2) Consultation. After receiving such notice, Artist shall consult with Agency to determine whether Artwork can be restored or relocated, and to attempt to come to a mutually agreeable plan for disposition of Artwork. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If Agency intends to remove Artwork, Artist shall consult regarding methods to minimize or repair any Alteration to Artwork caused by such removal and the potential costs of such removal.

3) Restoration. If Artwork is Altered, with or without prior notice to Artist, and Agency intends to maintain Artwork on display, Agency shall make a reasonable good faith effort to engage Artist in the restoration of Artwork and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future Agreement between Artist and Agency. However, Agency has no obligation under this Agreement to restore Artwork to its original condition, to compensate Artist for any restoration work, or to maintain Artwork in display. If Artist fails or refuses to negotiate with Agency in good faith with respect to any restoration, Agency may contract with any other qualified art conservator or artist for such restoration. During Artist's lifetime, Agency shall make best efforts not to display or deaccession only a portion of Artwork without Artist's consent.

4) Removal by Artist. Where time permits, if Agency intends to take action that will destroy or significantly Alter Artwork, such as destruction of all or part of Site, and Agency determines that it will not remove Artwork itself, Agency shall allow Artist to remove Artwork at Artist's expense within sixty (60) days of notice from Agency of the need to remove Artwork, in which case title shall revert to Artist. If Artist fails to remove Artwork within that sixty (60) day period, Agency may Alter Artwork in any manner, including destroying it, in Agency's sole discretion.

5) Remedies. If Agency breaches any of its obligations under this Section, Artist's remedies shall be limited as follows: If Agency inadvertently fails to provide a required prior notice of Alteration, Agency will provide notice as soon as it discovers the omission, and before Alteration of Artwork if that remains possible. If Agency Alters Artwork without providing Artist a required prior notice of Alteration, Artist shall be given the first right of refusal to restore Artwork at the same location and Agency shall make reasonable efforts to provide funding for the restoration. If Agency funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore Artwork at Artist's expense. If Artist elects not to restore Artwork, Agency may retain another artist or conservator to restore it, or may Alter Artwork in any manner, at Agency's sole discretion.

6) If Agency Alters Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

D. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, representatives whether paid or unpaid (e.g. volunteer), successors or assigns of Agency, Artist retains Artist's moral rights in Artwork, as establishes in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights law that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for

Alteration of Artwork against a third party who is not an officer, employee, agent, representative whether paid or unpaid (e.g. volunteer), successor or assign of Agency. Agency has no obligation to pursue claims against third parties to remedy or prevent Alteration of Artwork. However, as owner of Artwork, Agency may pursue claims against third parties for damages or to restore Artwork if Artwork has been Altered without Agency's authorization.

25. Conflicts of Interest

Through its execution of this Agreement, Artist acknowledges that it is familiar with the provisions of §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

26. Notices; Agency Contact; Consultant Contact

A. Notices. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail or by fax, and shall be addressed as follows:

To Agency: Ann Merideth
Community Development Director
Lafayette Redevelopment Agency
3675 Mount Diablo Boulevard, Suite 210
Lafayette, CA 94549

Phone: 925-284-1968
Fax: 925-284-3169

To Artist: Kana Tanaka
654 Yuba St.
Richmond, CA 94805

Phone (cell): 707-363-4655
Phone & Fax: 510-231-9917

To Consultant: Cherie Newell
Director, Professional Services
Oakland Museum of California
1000 Oak Street
Oakland, CA 94607

Phone: 510-238-6836
Fax: 510-238-6838

Any notice of default must be sent by certified U.S. mail.

Any change in the designation of the person or address to which submittals, requests, notices and reports shall be delivered is effective when the other party has received written notice of the change.

B. Agency Liaison. In performing the services provided for in this Agreement, Artist's liaison with Agency will be Ann Merideth, City of Lafayette Community Development Director.

C. Consultant Liaison. In performing the services provided for in this Agreement, Artist's liaison with Consultant will be Cherie Newell, Director, Professional Services, Oakland Museum of California.

27. Ownership of Results and Risk of Loss

A. Title Transfer. Except in the case of early termination of this Agreement, title to Artwork shall transfer from Artist to Agency upon Agency's Final Acceptance of Artwork. Title transfer shall be self-executing upon Agency's Final Acceptance. Artist will cooperate in providing to Agency any title transfer documents Agency may request or require during or after the Term of this Agreement.

B. Risk of Loss. The risk of loss or damage to Artwork shall be borne solely by Artist until Final Acceptance of Artwork by Agency. Artist shall take steps to protect Artwork from loss or damage. Agency shall make a good faith effort to inspect Artwork within fifteen (15) days after completion so that Agency can approve Artwork by resolution in a timely fashion.

C. Ownership of Documents. Conceptual Design, Design Development Documents, Construction Documents, Samples, Mock-ups and all other documents prepared and submitted by Artist to Agency pursuant to this Agreement shall belong to Agency. Artist may retain originals of such documents and items and provide copies to Agency.

28. Intellectual Property and Publicity Rights

A. Copyright. Subject to usage rights and licenses granted to Agency hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. Artist's copyright shall not extend to predominantly utilitarian aspects of Work, such as landscaping elements, furnishings, or other similar objects. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of Work.

B. Agency's Intellectual Property License. Artist grants to Agency, and to Agency's officers, employees, agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to Work, Artwork, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

1) Implementation, Use and Display. Agency may use and display Work (to the extent Work includes graphic representation or models) and Artwork. To the extent Work involves design elements that are incorporated by Agency into the design of Site, Agency may implement such elements at Site.

2) Reproduction and Distribution. Agency may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions. Agency may use such reproductions for any Agency related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for Agency's benefactors, documentation of Lafayette Library and Learning Center Art Collection, and catalogues or similar publications. Agency shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of Agency. The proceeds from the sale of any such reproductions shall be used to maintain and support Lafayette Library and Learning Center Art Collection or for any public purposes that Agency deems appropriate. The license granted hereunder does not include the right to create 3-dimensional reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with Artist.

3) Public Records Requests. Any documents provided by Artist to Agency are public records and Agency may authorize third parties to review and reproduce such documents pursuant to public records laws, including the California Public Records Act.

C. Third Party Infringement. Agency is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

D. Credit. Artist hereby agrees that all formal references to Artwork and any reproduction of Artwork in any form shall include the following credit: "Collection of Lafayette Library and Learning Center." Agency shall credit Artist for Artwork upon publication of any two dimensional reproductions of Artwork.

E. Publicity. Agency shall have the right to use Artist's name, likeness, and biographical information, in connection with display or reproduction and distribution of Artwork including all advertising and promotional materials regarding Agency. Artist shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of Artwork.

F. Trademark. In the event that Agency's use of Artwork creates trademark, service mark or trade dress rights in connection with Artwork, Agency shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

G. Unique. Artist warrants that the design of Artwork as expressed in the Proposal is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as Artwork. Artist may create works that utilize or incorporate various individual art elements that comprise Artwork, so long as Work utilizing or incorporating such individual elements (1) does not consist predominantly of such elements, (2) is not the same or substantially similar in image, design, dimensions and materials as Artwork, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which Artwork is to be displayed at Site. This warranty shall continue in effect for a period consisting of the life of Artist plus seventy (70) years or for the duration of Artwork's copyright protected status, whichever is longer, and shall be binding on Artist and Artist's heirs and assigns. In the case where Artist is comprised of two or more individual persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising the Artist. Recognizing that Agency has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that, in the event Artist breaches this warranty, Agency shall be entitled to enjoin Artist's breach. Nothing hereunder shall be construed to constrain Artist from creating posters, note cards, or other reproductions of Artwork.

H. Resale Royalty. If Agency sells Artwork as a fixture to real property, and if the resale value of Artwork is not itemized separately from the value of the real property, the parties agree that the resale price of Artwork shall be presumed to be less than the purchase price paid by Agency under this Agreement. Thus, Agency has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties. If Agency sells Artwork as an individual piece, separate from or itemized as part of a real property transaction, Agency shall pay to Artist a resale royalty to the extent required by law, based upon the sale price of Artwork.

29. Audit and Inspection of Records; Reports

A. Audit and Inspection of Records. Artist agrees to maintain and make available to Agency, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Artist will permit Agency to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Artist shall maintain such data records in an accessible location and condition for a period of not less than three (3) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Agency by this Section.

B. Records. Artist shall submit written reports as requested by Agency. The format and the content of such reports shall be determined by Agency. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

30. Subcontracting

Artist is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Agency in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

31. Assignment or Transfer

Artist guarantees that Artist will consistently give personal attention to the faithful execution of this Agreement, including any work preformed by employees, agents or subcontractors. Artist shall keep Work under Artist's control and shall not assign or subcontract Work, in whole or in part, excepts as provided in this Agreement. All transactions with subcontractors shall be made through Artist, and no subcontract, assignment or other transfer by Artist shall relieve Artist of any Artist's liability or obligations under this Agreement.

32. Non-waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions thereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

33. Nondiscrimination; Penalties

A. Artist Shall Not Discriminate. In the performance of this Agreement, Artist agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, or disability or against any employee of, any Agency employee working with, or applicant for employment with Artist, in any of Artist's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Artist.

B. Subcontracts. Artist shall incorporate by reference in all subcontracts the provisions of paragraph (a) above, and shall require all subcontractors to comply with such provisions. Artist's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

C. Nondiscrimination in Benefits. Artist does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in Lafayette, in real property owned by City of Lafayette or Agency, or where work is being performed for Agency elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration.

34. Drug-Free Workplace Policy

Artist acknowledges that pursuant to the Federal Drug-Free Workplace Act 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Agency premises. Artist agrees that any violation of this prohibition by Artist, its employees, agents or assigns will be deemed a material breach of this Agreement.

35. Compliance with Americans with Disabilities Act

Artist acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through Artist, must be accessible to the disabled public. Artist shall provide the services specified in this Agreement in a manner that complies with the ADA. Artist shall not discriminate against disabled persons in the provisions of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Artist, its employees, agents or assigns will constitute a material breach of this Agreement.

Artist shall cooperate with Agency and allow Agency to take reasonable steps to ensure that Artwork is accessible to the disabled, with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to Artwork, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to Artwork. If requested by Agency, Artist shall engage a consultant, as part of the project Budget, to review Artwork for compliance with the ADA.

36. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

37. Administrative Remedy for Agreement Interpretation

Should any questions arise as to the meaning and intent of this Agreement, the questions shall, prior to any other action or resort to any other legal remedy, be referred to Agency who shall decide the true meaning and intent of the Agreement.

38. Agreement made in California; Venue

The formation interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the information, interpretation and performance of this Agreement shall be the County of Contra Costa.

39. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

40. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 36.

41. Compliance with Laws

Artist shall keep itself fully informed of City of Lafayette's Municipal Code, ordinances and regulations, and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

42. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by Agency Counsel. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Artist, will be paid unless the provider received advance written approval from Agency Counsel.

43. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provisions valid and enforceable.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

LAFAYETTE REDEVELOPMENT AGENCY:

_____

Steven B. Falk
Executive Director

_____

Date

Approved as to Form:

_____

Malathy Subramanian
Agency Counsel

Attest:

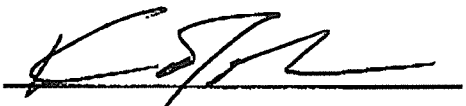
_____

Joanne Robbins
Clerk to Agency Board

_____

Date

ARTIST:



Authorized Signature

KANA TANAKA

Printed Name

8/07/2008

Date

APPENDICES

A. Services to be Provided by Artist
B. Approved Artist's Costs

Appendix A

SERVICES TO BE PROVIDED BY ARTIST

Phase I
Conceptual Design of Artwork

1. Authorization. Phase I has been authorized by Agency by letter dated _____ , 2008.

2. Scope of Work.

   a. Artist shall deliver a Proposal for Artwork ("Proposal"). The Proposal shall include drawings (in plan and elevation) and/or 3-dimensional models, proposed materials and samples, and a written description of Artwork in sufficient detail that Artist's design intent is clearly expressed.

   b. Proposal shall reflect the requirements of Site and Agency, as expressed in the Request for Qualifications and as further discussed in communications with Agency and Consultant. It is Artist's responsibility to coordinate Artist's Proposal and Conceptual Design Documents with the design for Site.

   c. Proposal shall include a Budget for the cost of design, fabrication, transportation and installation of Artwork. The Budget shall include documentation of the sources and/or assumptions upon which the Budget figures are based.

   d. Artist shall attend project meetings and make presentations to Agency, Consultant, Architect, Committee, and other individuals and organizations, as needed. Artist agrees to collaborate closely with Agency, Consultant, and Architect through in-person meetings and other necessary means of communication to allow Architect to thoroughly integrate the Proposal into architectural drawings, if needed.

3. Schedule of Deliverables. Proposal is due on or before September 30, 2008.

4. Compensation. Artist's compensation for Phase I shall be $16,500.

5. Insurance Requirements. Artist shall obtain the following insurance before commencement of Phase I:

   a. Workers Compensation: In statutory amounts with Employers' Liability Limits not less than $1,000,000 each accident. Artist shall obtain such insurance prior to certification of this Agreement. To the extent Artist warrants, in writing, that Artist is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to Agency proof of Workers Compensation insurance.

   b. Automobile Liability Insurance: If Artist is an individual, Personal Automobile Liability Insurance with limits not less than $100,000/$300,000 each occurrence. If Artist is a corporation or other legal entity, Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, unless a lesser amount is approved by Agency. Artist shall obtain such insurance prior to certification of this Agreement.

   c. Required Policy Language: All of the above insurance requirements shall include language and meet all other requirements as specified in Section 14 in the body of this Agreement.

6. Payment Schedule.

Artist shall be paid $8,250 at the start of Phase I. Upon the completion of Phase I, as determined by Agency and Consultant, Artist shall be paid $8,250.

Appendix A

SERVICES TO BE PROVIDED BY ARTIST

Phase II
Design Development Documents

1. Authorization. Phase II has been authorized by Agency by letter dated _____ , 2008.

2. Term of Agreement. The Term of this Agreement is extended to _____ , 2008.

3. Scope of Work.

   a. Artist shall deliver Design Development Documents. Design Development Documents shall incorporate the further development and refinement of the Proposal developed under Phase I, including the input of Agency, Consultant and Architect. It is Artist's responsibility to coordinate the Design Development Documents for Artwork with the Architect's design development and/or construction documents for Site.

   b. Design Development Documents shall reflect a Proposal that continues to express the artistic intent of the Conceptual Design Documents and satisfies the requirements of Agency in accordance with Contract Documents approved in Phase I.

   c. Artist shall provide an updated Budget for the design, fabrication, transportation and installation of Artwork, and provide written estimates and other documentation on the sources and/or assumptions upon which the Budget figures are based.

   d. Artist shall review the Architect's design development documents to ensure accurate integration of Artist's design into Site, and provide Agency, Consultant and Architect with written comments and/or corrections.

   e. Artist shall deliver a schedule describing Artist's specific timelines for completing Work.

   f. Artist shall deliver a General Maintenance Plan for Artwork.

   g. Artist shall attend project meetings and make presentations to Agency, Consultant, Architect, Committee, and other individuals and organization, as needed. Artist agrees to collaborate closely with Architect through in-person meetings and other necessary means of communication to allow Architect to thoroughly integrate Artwork into architectural presentation drawings, if required. Artist shall review architectural presentation drawings and related design material for accuracy of the integration of the proposed Artwork within Site. Artist shall provide written comments on the accuracy of the Architect's documents to Agency, Consultant, and Architect.

   h. Artist shall deliver subcontracts of all or any Work, as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner (collectively, "Subcontracts and Documentation").

4. Schedule of Deliverables.

Deliverable	Due Date
Design Development Documents	
Budget	
Description of Maintenance Requirements	
Subcontracts and Documentation	

5. Compensation. Artist's compensation for Phase II shall be $_____. Such compensation shall covert all of Artist's costs and fees for Phase II.

6. Insurance and/or Bond Requirements. Artist shall obtain the following insurance and/or bond before commencement of Phase II.

a. Workers Compensation: In statutory amounts with Employers' Liability Limits not less than $1,000,000 each accident. Artist shall obtain such insurance prior to certification of this Agreement. To the extent Artist warrants, in writing, that Artist is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to Agency proof of Workers Compensation insurance.

b. Automobile Liability Insurance: If Artist is an individual, Personal Automobile Liability Insurance with limits not less than $100,000/$300,000 each occurrence. If Artist is a corporation or other legal entity, Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, unless a lesser amount is approved by Agency. Artist shall obtain such insurance prior to certification of this Agreement.

c. Required Policy Language: All of the above insurance requirements shall include language and meet all other requirements as specified in Section 14 in the body of the Agreement.

7. Payment Schedule.

8. Approved Subcontractors.

The following subcontractors are approved for this place of work:

[Insert subcontractors, if applicable]

Subcontractors are required to have the following insurance. All insurance requirements shall include language and other requirements as specified in Section 14 in the body of this Agreement for Workers Compensation, Automobile Liability, and General Liability Insurance.

9. Other Requirements.

Appendix A

SERVICES TO BE PROVIDED BY ARTIST

Phase III
Construction Documents

1. Authorization. Phase III has been authorized by Agency by letter dated _____ , 2008.

2. Term of Agreement. The Term of this Agreement is extended to _____ , 2008.

3. Scope of Work.

   a. Artist shall deliver Construction Documents for construction of the Proposal as approved under Phase II, which must be signed and stamped by design professionals licensed in the State of California, as required by the California Uniform Building Code and any Lafayette amendments to the Building Code.

   b. Construction Documents shall reflect the artistic intent of the Proposal as expressed in the Contract Documents produced and approved under Phase II, and as discussed and generally agreed upon in Artist's communications with Agency.

   c. Artist shall review Architect's Construction Documents for accuracy of the integration of Artist's Proposal within Site and provide Agency, Consultant and Architect with written comments and/or corrections.

   d. Artist shall deliver Mock-ups and Samples, as required by Agency.

   e. Artist shall attend project meetings and make presentations to Agency and Consultant, Committee, and/or other individuals and organizations, as needed. Artist agrees to collaborate closely with Agency and Consultant through in-person meetings and other necessary means of communication to allow Agency to thoroughly integrate the final design into the Site.

   f. Artist shall deliver subcontracts of all or any Work pursuant to Section 30 in the body of this Agreement, as well as documentation establishing that all employees, subcontractors, and suppliers have been paid in a timely manner (collectively, "Subcontracts and Documentation").

4. Schedule of Deliverables.

Deliverable	Due Date
Construction Documents	
Mock-ups	
Subcontracts and Documentation	

5. Compensation. Artist's compensation for Phase III shall be $_____. Such compensation shall cover all of Artist's costs and fees for Phase III.

6. Insurance and/or Bond Requirements. Artist shall obtain the following insurance and/or bond before commencement of Phase III:

a. Workers Compensation: In statutory amounts with Employers' Liability Limits not less than $1,000,000 each accident. Artist shall obtain such insurance prior to certification of this Agreement. To the extent Artist warrants, in writing, that Artist is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to Agency proof of Workers Compensation insurance.

b. Automobile Liability Insurance: If Artist is an individual, Personal Automobile Liability Insurance with limits not less than $100,000/$300,000 each occurrence. If Artist is a corporation or other legal entity, Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, unless a lesser amount is approved by Agency. Artist shall obtain such insurance prior to certification of this Agreement.

c. Professional Liability Insurance: Professional Liability Insurance for all design professionals (such as architects, landscape architects or engineers) who provide Artist with signed stamped drawing or calculations. Such insurance shall have limits not less than $1 million each claim with respect to negligent acts, errors and omissions, and any deductible may not exceed $50,000 each claim. Artist's subcontractors shall obtain such insurance when Artist subcontracts for any work from such a design professional, and prior to the submittal of Construction Documents. Any design professional required to obtain professional liability insurance must maintain proof of insurance for the term of this Agreement.

d. Required Policy Language: All of the above insurance requirements shall include language and other requirements as specified in Section 14 in the body of the Agreement.

7. Payment Schedule.

8. Approved Subcontractors.

The following subcontractors are approved for this place of work:

[Insert subcontractors, if applicable]

Subcontractors are required to have the following insurance. All insurance requirements shall include language and other requirements as specified in Section 14 in the body of this Agreement for Workers Compensation, Automobile Liability, and General Liability Insurance.

9. Other Requirements.

Appendix A

SERVICES TO BE PROVIDED BY ARTIST

Phase IV
Fabrication of Artwork

1. Authorization. Phase IV has been authorized by Agency by letter dated _____, 2008.

2. Term of Agreement. The Term of this Agreement is extended to _____, 2008.

3. Scope of Work.

   a. Artist shall fabricate Artwork in accordance with all Contract Documents approved by Agency through Phase III.

   b. Shop Drawings. Artist shall deliver Shop Drawings as needed for framing and attachment hardware, produced by Artist's fabricator. The Shop Drawings shall be signed and stamped by the fabricator's structural engineer and by Artist's structural engineer, as required by the California Uniform Building Code and any amendments to the Building Code by Agency.

   c. Transportation Plan. Artist shall deliver a written list of Workers, vehicles, and equipment that will be involved in the transportation of Artwork to Site.

   d. Installation Map. Artist shall deliver a numbered map Indicating location and sequence of installation and evidence that Artist has numbered Artwork and its individual components to correspond with the Installation Map.

   e. Artist shall deliver subcontracts of all or any Work pursuant to Section 30 in the body of this Agreement, as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner (collectively "Subcontractors and Documentation").

4. Schedule of Deliverables.

Deliverable	Due Date
Completed Fabrication of Artwork	
Shop Drawings	
Transportation Plan	
Installation Map	
Subcontracts and Documents	

5. Compensation. Artist's compensation for Phase IV shall be $_____. Such compensation shall cover all of Artist's costs and fees for Phase IV.

6. Insurance and/or Bond Requirements. Artist shall obtain the following insurance and/or bond before commencement of Phase IV:

a. Workers Compensation: In statutory amounts with Employers' Liability Limits not less than $1,000,000 each accident. Artist shall obtain such insurance prior to certification of this Agreement. To the extent Artist warrants, in writing, that Artist is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to Agency proof of Workers Compensation insurance.

b. Automobile Liability Insurance: If Artist is an individual, Personal Automobile Liability Insurance with limits not less than $100,000/$300,000 each occurrence. If Artist is a corporation or other legal entity, Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, unless a lesser amount is approved by Agency. Artist shall obtain such insurance prior to certification of this Agreement.

c. Professional Liability Insurance: Professional Liability Insurance for all design professionals (such as architects, landscape architects or engineers) who provide Artist with signed stamped drawing or calculations. Such insurance shall have limits not less than $1 million each claim with respect to negligent acts, errors and omissions, and any deductible may not exceed $50,000 each claim. Artist subcontractors shall obtain such insurance when Artist subcontracts for any work from such a design professional, and prior to the submittal of Construction Documents. Any design professional required to obtain professional liability insurance must maintain proof of insurance for the term of this Agreement.

d. Commercial General Liability Insurance: With limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Artist shall obtain such insurance prior to transporting or installing Work at Site.

e. Fine Arts Insurance: Fine Arts Insurance or other insurance against loss is an amount to be specified in a subsequent contract modification. Artist shall obtain such insurance prior to commencing fabrication of Artwork.

f. Required Policy Language: All of the above insurance requirements shall include language and other requirements as specified in Paragraph 14 in the body of this Agreement.

g. Bonds: Performance, Labor and Materials bonds as specified in Paragraph 11 of the body of this Agreement.

7. Payment Schedule.

8. Approved Subcontractors.

The following subcontractors are approved for this place of work:

[Insert subcontractors, if applicable]

Subcontractors are required to have the following insurance. All insurance requirements shall include language and other requirements as specified in Section in the body of this Agreement for the following:

a. Workers Compensation Insurance
b. Automobile Liability Insurance
c. Commercial General Liability Insurance

d. Professional Liability Insurance
e. Performance and labor and materials bonds

9. Other Requirements.

Appendix A

SERVICES TO BE PROVIDED BY ARTIST

Phase V
Transportation and Installation of Artwork

1. Authorization. Phase V has been authorized by Agency by letter dated _____ , 2008.

2. Term of Agreement. The Term of this Agreement is extended to _____ , 2008.

3. Scope of Work.

   a. Artist shall provide for the transportation of Artwork in accordance with the Transportation Plan approved by Agency in Phase IV. Artist shall not transport Artwork until access to Site has been approved and scheduled by Agency. Artist shall prepare Artwork for transportation in accordance with customary industry standards for the transportation of fine works of art, and in accordance with the following additional specifications:

      [Insert specific art transportation and specifications, if any]

   b. Artist shall install Artwork in accordance with Contract Documents approved in Phase IV.

   c. Artist shall consult with Agency and Consultant prior to and during the installation of Artwork. Artist shall coordinate Artist's activities on site with Agency and Consultant

   d. Maintenance Documents. Artist shall deliver all information necessary for Agency to properly care for and maintain Artwork, including information regarding the physical make-up of Artwork, methods and materials, and information about the artistic intent of Artist in the Design, Fabrication and Installation of Artwork.

   e. Photographic Documentation. Artist shall deliver a set of high resolution digital photographs of the installed Artwork for Agency's records.

   f. Artist shall deliver subcontracts of all or any Work pursuant to Section 30 in the body of this Agreement as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner (collectively "Subcontracts and Documentation").

   g. Artist is responsible for rental, erection and removal of all scaffolding, lifts, and all other equipment needed for installation. Artist shall supply all hardware and personnel necessary for installation. Artist is responsible for repairing or paying for the repair of any damage to Site, Artwork, or Work of other contractors to the extent such damage is caused by Artist, Artist's agents, employees, subcontractors or contractors. At the completion of installation, Artist shall clean and restore Site and Work area to the condition it was in at the beginning of installation.

   h. Approval of Site. The preparation of Site for installation of Artwork shall be the responsibility of Agency. Where Artist's Work is associated with that of a contractor engaged by Agency to do work on Site, Artist shall examine Work of such other contractors and report in writing to Agency and Consultant any visible defect or condition preventing the proper execution of Artist's Work. If Artist proceeds without giving notice, Artist shall be held to have approved Work or material and the existing conditions, and shall be responsible for any defects in Artist's own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. To the extent that any part of the Artist's Work is

to interface with work performed or installed by a contractor engaged by Agency to perform work on Site, Artist shall inspect and measure the in-place work and promptly report to Agency and Consultant any defect in such in-place work that will impede or increase the cost of Artist's interface unless corrected. Agency will require the party responsible for the defective work to make corrections so as to conform to its contract requirements, or if the defect is the result of a default or omission in the contract documents, may issue a change order. If Artist fails to measure, inspect and/or report defects that are reasonably discoverable, all costs of accomplishing the interface shall be borne by Artist. The forgoing does not apply to latent defects. Artist shall report to Agency any latent defects in another contractor's work at any time such defects become known. Agency shall promptly thereafter take such steps as may be appropriate. Any difference or conflict that may arise between Artist and contractors engaged by Agency to perform Work on Site shall be adjusted as determined by Agency when necessary to facilitate Work of Artist and/or other contractors or workers. No damages or claims by Artist will be allowed other than an extension of time for the completion of Work. Such an extension will be for the period of time Agency shall consider Artist to have been delayed in the completion of Work by reason of Work of other contractors or workers.

4. Schedule of Deliverables.

Deliverable	Due Date
Transportation of Artwork	
Installation of Artwork	
Installation of Documents	
Maintenance Documents	
Photographic Documentation	
Subcontracts and Documentation	

5. Compensation. Artist's compensation for Phase V shall be $_____. Such compensation shall cover all of Artist's cost and fees for Phase V.

6. Insurance and/or Bond Requirements. Artist shall obtain the following insurance and/or bond before commencement of Phase V:

a. Workers Compensation: In statutory amounts with Employers' Liability Limits not less than $1,000,000 each accident. Artist shall obtain such insurance prior to certification of this Agreement. To the extent Artist warrants, in writing, that Artist is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to Agency proof of Workers Compensation insurance.

b. Automobile Liability Insurance: If Artist is an individual, Personal Automobile Liability Insurance with limits not less than $100,000/$300,000 each occurrence. If Artist is a corporation or other legal entity, Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, unless a lesser amount is approved by Agency. Artist shall obtain such insurance prior to certification of this Agreement.

c. Professional Liability Insurance: Professional Liability Insurance for all design professionals (such as architects, landscape architects or engineers) who provide Artist with signed stamped drawing or

calculations. Such insurance shall have limits not less than $1 million each claim with respect to negligent acts, errors and omissions, and any deductible may not exceed $50,000 each claim. Artist subcontractors shall obtain such insurance when Artist subcontracts for any work from such a design professional, and prior to the submittal of Construction Documents. Any design professional required to obtain professional liability insurance must maintain proof of insurance for the term of this Agreement.

d. Commercial General Liability Insurance: With limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Artist shall obtain such insurance prior to transporting or installing Work at Site.

e. Fine Arts Insurance: Fine Arts Insurance or other insurance against loss in an amount to be specified in a subsequent contract modification. Artist shall obtain such insurance prior to commencing fabrication of Artwork.

f. Transportation and/or Installation Coverage: Transportation and/or Installation Coverage as necessary and appropriate.

g. Required Policy Language: All of the above insurance requirements shall include language and other requirements as specified in Section 14 in the body of this Agreement.

h. Bonds: Performance, Labor and Materials bonds as specified in Section 11 in the body of this Agreement.

7. Payment Schedule.

8. Approved Subcontractors.

The following subcontractors are approved for this place of work:

[Insert subcontractors, if applicable]

Subcontractors are required to have the following insurance. All insurance requirements shall include language and other requirements as specified in Section 14 in the body of this Agreement for the following:

a. Workers Compensation Insurance
b. Automobile Liability Insurance
c. Commercial General Liability Insurance
d. Professional Liability Insurance
e. Performance and labor and materials bonds

9. Other Requirements.

Appendix B

ARTIST'S APPROVED COSTS

[List, as applicable:]

Personnel or Hourly Rate

Flat rate for specified period (e.g., monthly)

Rate for use of Artist's equipment, if applicable

Rate for faxes (sending only), mileage, etc.

Actual cost for Artist meals, accommodations, long distance and cellular phone charges, postage, vehicle rental, etc., subject to the approval of Agency.

Cost of any goods or materials to be provided by Artist.

Any other applicable rates or charges under the Agreement.